tinct. Yet from the point of view of class instruction this collection involves slight duplication of the work covered in any course in constitutional law. The constantly widening sphere of administrative activity and the corresponding increase in number and importance of the interests of person and property subjected to administrative control make it highly desirable that the special problems treated in Professor Freund's collection be made a separate topic of study in all our law schools.

T. R. Powell.

HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS. By HENRY CAMPBELL BLACK. Second Edition. St. Paul, Minnesota: WEST PUBLISHING COMPANY. 1911. pp. xii, 710.

The most distinguished and authoritative interpreter of the civil law in Germany (if not in Europe) during the latter part of the nineteenth century, Professor Windscheid of Leipzig University, was accustomed to tell his students that the degree of freedom with which written laws were interpreted by courts varied in different countries and at different times. In endeavoring to determine and carry out the purpose of a law (*voluntas legis*), courts were accustomed, everywhere and always, "to think over again the thought which the legislator was trying to express." The Roman jurists, however, did more than this: they did not hesitate "to think out the thought which the legislator was trying to think." It was Windscheid's belief that modern courts did not do this; but he knew practically nothing of the history of the English law, and he was apparently not familiar with French judicial practice. In 1904, in connection with the celebration of the centenary of the French Civil Code, M. Ballot-Beaupré, chief justice of the highest court in the Republic, declared that the provisions of the Napoleonic legislation had been adapted to modern conditions by interpretation "in the evolutive sense." "We do not inquire," he explained, "what the legislator willed a century ago, but what he would have willed if he had known what our present conditions would be."

In Mr. Black's treatise on construction, which is substantially a laborious and excellent digest of the American cases on the subject, and which has deservedly achieved the success of a second edition, the student will find no hint of such audacities. Mr. Black has not considered, apparently, what the courts have done or are doing; he has confined his attention to what they say they do. This, of course, is a defensible method of constructing a treatise for practitioners. The lawyer must address the court in its own language. If he wishes the court to extend its power of interpretation, he will cite *dicta* concerning its duty to consider the "spirit and reason of the law" (pages 66-76), and to carry out its "purpose" (pages 76-80), even as regards its "implications" (pages 84-94). He will be careful not to confine too closely the exact degree of power which he wishes the court to exercise; it would imperil his cause to employ the searching analysis of a Windscheid or the frank language of a Ballot-Beaupré.

Mr. Black himself regards all such extensions of the judicial power as illegitimate; and in his preface (page vi) he asserts that our courts are steadily becoming more conservative in this matter. No one's judgment on this point is entitled to higher consideration than Mr. Black's; but his opinion would carry fuller conviction if his method of investigation were different. When he says that a doctrine has been abandoned, it is not always certain that the evidence adduced goes

beyond proving that the phraseology in which the doctrine was formerly stated has become obsolete.

The reviewer finds himself least in accord with the author in the matter of the construction of constitutions. In some cases Mr. Black's statements seem open to criticism even from his own point of view, taking into consideration merely the language used by the courts. For example, the very important statement that "the principle of *stare decisis* applies with special force to the construction of constitutions" (page 44), is supported by one citation only: Maddox *v.* Graham, 2 Metcalf (Ky.) 56. In that case the reviewer can find no such assertion or implication. All that he can find is the declaration (at page 85) that *stare decisis* applies with special force where the case involves the validity of contracts and the rights of innocent third parties under a statute previously examined and upheld as constitutional by the same court. On the other hand there are decisions not cited by Mr. Black which make more or less directly against his generalization: *cf.* Willis *v.* Owens, 43 Texas 41 (48); Kneeland *v.* Milwaukee, 15 Wis. 454 (692); Robinson *v.* Schenck, 102 Ind. 307 (319). And if we consider in particular whether any such generalization is applicable in the matter of interpreting the federal Constitution, we search in vain for any decisions or *dicta* which would support it. On the other hand, in Pollock *v.* Farmers' Loan and Trust Company, 157 U. S. 429 (574-576), we find that the doctrine of *stare decisis* is applicable only "in respect of decisions directly upon the points in issue," and is "not to extend to any decision upon a constitutional question" if the court "is convinced that error in principle might supervene." It is probable that Mr. Black, like many other lawyers and laymen, dislikes the position which the Supreme Court took in that famous case; but it is an extraordinary proceeding to ignore it.

If we consider the question from other points of view than Mr. Black's—if we ask not only what the Supreme Court has said but also what it has done—it would be extremely difficult to show that that tribunal has adhered more rigidly to previous decisions in construing the Constitution than in interpreting ordinary statutes. And if we go still further from any of the points of view which Mr. Black takes—if we consider that, while state constitutions are easily amended—the federal Constitution is practically unamendable—may we not legitimately inquire whether the situation does not justify the assertion that the principle of *stare decisis* should apply with less force to the construction of the federal Constitution than to any class of cases with which the Supreme Court has to deal? May we not say that there is more reason for interpreting that Constitution "in the evolutive sense" than can be found for so interpreting any other body of written law in the world?

The same failure to consider the difference between our amendable state constitutions and our inflexible federal Constitution appears in Mr. Black's statements that "in the construction . . . of a constitution the courts have nothing to do with the argument from inconvenience"; that they are not at liberty to take into account prospective "unjust, oppressive or invidious results"; and that they are not to consider "changes in public opinion" produced by "the increasing complexity of modern life." (Pages 35, 36.) All these statements, indeed, are limited to cases where the meaning of a constitutional provision is "obvious"; but this is a matter on which opinions may easily differ, and it is well known that the opinions even of judges are

influenced, consciously or unconsciously, by their ideas of convenience and justice and by public opinion. Couple this position of Mr. Black's with his doctrine that *stare decisis* "applies with special force to the construction of constitutions," and the attitude taken by the New York Court of Appeals in its interpretation of "due process" becomes natural if not inevitable. On the other hand, the attitude which the Supreme Court at Washington is now assuming in the interpretation of "due process" appears to involve the negation of one or the other, if not of both, of Mr. Black's principles.

Munroe Smith.

THE LAW OF CONTRACTS. By CLARENCE D. ASHLEY. Boston: LITTLE, BROWN & Co. 1911. pp. ix, 310.

This carefully and conscientiously prepared treatise well deserves the attention and study of the profession, as well as students of law. It is a scholarly work, and discloses painstaking investigation on the part of its author.

One feature, particularly, entitles the book to high commendation, namely, its lucidity, which is coupled with a freedom from efforts at evasion of difficult questions. Too many text-books manifest such confusion of thought, or of expression of thought, that the reader is left in a maze, or, at the very least, in uncertainty as to just where the author stands on a given proposition. This may result from either one of two things:—to wit, either from the author's failure to think clearly, or from his wilful design to cover up, by mystification of language, his paucity of thought on the subject under discussion.

The work under review is entirely free from this vice. The author does not seek, in any part of his work, to dodge an issue, but on the contrary meets it courageously and when he does not find a solution satisfactory to himself he frankly says so. In a word, the author is entitled to the highest praise for the intellectual honesty displayed in his labors. In this respect the treatise should be a model for other writers.

The book covers, in compact form, all the topics legitimately belonging to the law of simple contracts, and in addition contains some discussion of the law of promises under seal. It is proper to couple with a treatise on the law of simple contracts sufficient discussion of the law governing promises under seal as may be necessary to distinguish the former from the latter.

It is not inconsistent with a declaration that this treatise is a distinct contribution to the literature on the subject, to say that conclusions other than some of those reached by the author might be more satisfactory. For example, one could not very well agree with the conclusion reached in the discussion on page 14 in respect of the question which would arise in the case of an offer sent from New York to Massachusetts and a letter of acceptance mailed in Massachusetts, addressed to the offerer in New York. The point of the Massachusetts doctrine in respect of an offer by letter, contemplating a bilateral contract, is that the acceptance, to be such, must be a promise, and that a promise is nothing until it is communicated, and that therefore the letter containing such promise must be received and read by the offerer before acceptance takes place.

By way of further illustration, it would be difficult to agree with the statement of the author on page 70. In a discussion of the case of Pillans *v.* Van Mierop, he says: